

1 PAMELA E. COGAN (SBN 105089)  
2 BLAKE J. RUSSUM (SBN 258031)  
3 ROPERS, MAJESKI, KOHN & BENTLEY  
4 1001 Marshall Street, Suite 500  
5 Redwood City, CA 94063-2052  
6 Telephone: (650) 364-8200  
7 Facsimile: (650) 780-1701  
8 Email: pcogan@rmkb.com;  
9 brussum@rmkb.com

6 Attorneys for Defendant  
7 AMERICAN ECONOMY INSURANCE  
8 COMPANY

8 UNITED STATES DISTRICT COURT  
9  
10 EASTERN DISTRICT OF CALIFORNIA

11 ORTHOPEDIC MEDICAL PROPERTIES,

12 Plaintiff,

13 v.

14 AMERICAN ECONOMY INSURANCE  
15 COMPANY, a California general  
16 partnership, and DOES 1 through 50,  
17 inclusive.

18 Defendant.

CASE NO. 1:12-CV-00530-AWI-JLT

Magistrate Judge: Hon. Jennifer L. Thurston

Action Filed: February 27, 2012

**ORDER GRANTING IN PART  
STIPULATION TO AMEND THE  
SCHEDULING ORDER**

(Doc. 19)

18 Before the Court is the stipulation of the parties to extend deadlines set forth in the  
19 scheduling order. (Doc. 19) Counsel explain they wish for the extra time in order to complete  
20 mediation and report that the earliest date by which they may complete the mediation is April  
21 2013. Id. at 2. They assert also that the extension of dates will not impact the trial date or the  
22 pretrial conference date. Id.

23 **I. Analysis**

24 Pursuant to Fed.R.Civ.P. 16(b)(3), a case schedule may be modified only for good cause  
25 and only with the judge's consent. Fed.R.Civ.P. 16(b). In Johnson v. Mammoth Recreations, Inc.,  
26 975 F.2d 604, 609 (9th Cir.1992), the Court explained,

27 ... Rule 16(b)'s "good cause" standard primarily concerns the diligence of the party  
28 seeking the amendment. The district court may modify the pretrial schedule "if it  
cannot reasonably be met despite the diligence of the party seeking the extension."

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1 Fed .R.Civ.P. 16 advisory committee's notes (1983 amendment) ... [T]he focus of  
2 the inquiry is upon the moving party's reasons for seeking modification.... If that  
party was not diligent, the inquiry should end.

3 Parties must “diligently attempt to adhere to that schedule throughout the subsequent course of  
4 the litigation.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D.Cal.1999); see Marcum v.  
5 Zimmer, 163 F.R.D. 250, 254 (S.D.W.Va.1995). In part, the “good cause” standard requires the  
6 parties to demonstrate that “noncompliance with a Rule 16 deadline occurred or will occur,  
7 notwithstanding her diligent efforts to comply because of the development of matters which could  
8 not have been reasonably foreseen or anticipated at the time of the Rule 16 Scheduling conference  
9 . . . .” Jackson, 186 F.R.D. at 608, emphasis added.

10 The parties’ willingness to settle this case is admirable. However, settlement discussions  
11 generally are not an “unanticipated” development. Not explained in the stipulation is why the  
12 parties failed to make diligent efforts to schedule the mediation before now. When they filed  
13 their joint scheduling report seven months ago, the parties reported their intention to attempt  
14 mediation. (Doc. 10 at 5) However, for reasons that are not set forth, they waited until nearly the  
15 end of the discovery period to engage in the intended mediation. Moreover, they have failed to  
16 understand that the dates they proposed for the modified schedule *do* impact the trial dates and  
17 the pretrial conference dates in that they have failed to provide sufficient time in their proposed  
18 modified schedule to allow dispositive motions to be decided before the pretrial conference.<sup>1</sup>

19 The Court applauds the parties' efforts and desire to settle this matter. However, given the  
20 crushing caseload faced by this Court, it cannot allow delayed settlement efforts to derail the  
21 progress of this case. Thus, though the parties are encouraged to continue settlement discussions,  
22 the Court has the ability to modify the case schedule only minimally. However, to this extent, the  
23 Court will **GRANT** the stipulation in part.

24 **ORDER**

25 Based upon the forgoing, the Court **ORDERS** the scheduling order amended as follows:

- 26 1. Non-expert and expert discovery SHALL be completed no later than May 17, 2013;

27 <sup>1</sup> Though counsel may believe that the amount of time needed by Judge Ishii to decide such a motion is excessive, the  
28 fact that he, along with Judge O’Neill, carries the highest weighted caseload in the entire federal system, significantly  
impacts his ability to quickly address motions filed in civil cases.

- 1           2. Joint expert disclosure SHALL occur no later than April 12, 2013;
- 2           3. Joint rebuttal expert disclosure SHALL occur no later than May 3, 2013;
- 3           4. No other modifications to the scheduling order are authorized.
- 4
- 5

6 IT IS SO ORDERED.

7 Dated: March 6, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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